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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

ALAMO RECYCLING, LLC,

Plaintiff, Cross-defendant and
Appellant,

v.

SAN BERNARDINO TRUCKING, LLC et
al.,

Defendants, Cross-complainants and
Respondents.

E046244

(Super.Ct.No. CIVSS804077)

OPINION

APPEAL from the Superior Court of San Bernardino County. John P. Wade,
Judge. Affirmed.

The Law Offices of Gregory A. Paiva & Associates and Gregory A. Paiva for
Plaintiff, Cross-defendant and Appellant.

Julander, Brown & Bollard, William C. Bollard and Catherine A. Close for
Defendants, Cross-complainants and Respondents.

Plaintiff Alamo Recycling, LLC (Alamo) contends the trial court abused its discretion in granting the motion of defendants San Bernardino Trucking, LLC (SB Trucking) and Abad Rodriguez (Rodriguez) (herein collectively referred to as Defendants) to disqualify Alamo's counsel. We affirm.

I. PROCEDURAL BACKGROUND AND FACTS¹

On April 1, 2008, Alamo, represented by Gregory A. Paiva (Paiva) and The Law Offices of Gregory A. Paiva (the Law Firm), initiated this action against Defendants. Alamo was a recycling business that started in or about October 2006. From Alamo's inception, Defendants ran its operation. About August 2007, Alamo noticed discrepancies in bank deposits. Alamo suspected that Defendants were not disclosing all monies and keeping cash transactions.

About January 2008, Alamo assumed its own day-to-day operations; however, it allowed SB Trucking to remain for hauling materials. One month later, Alamo still suspected that Defendants were not disclosing all monies. In March, Alamo discharged Defendants and anyone related to Rodriguez. That same month, Defendants purchased land and equipment at a location close to Alamo's location for the purpose of conducting the same type of business. According to Alamo, Defendants harassed Alamo's

¹ On December 9, 2008, this court granted the November 17, 2008, request to augment the record with (1) motion to disqualify Alamo's attorneys; (2) declaration of Rodriguez; (3) notice of nonreceipt of opposition to the motion to disqualify; (4) the court's minute order dated June 25, 2008; and (5) the July 2, 2008 order granting the motion to disqualify.

customers, entered its property without permission, and removed three Caterpillar forklifts.

On May 23, 2008, Defendants filed a motion to disqualify Paiva and the Law Firm from representing Alamo in the underlying action. The motion was supported by the declaration of Rodriguez with attached exhibits. The motion alleged that Paiva and the Law Firm previously represented Defendants in connection with matters substantially related to this action, that Paiva obtained confidential information from Defendants, and that Paiva is a witness, or potentially a cross-defendant, in this action. It was further asserted that Rodriguez never consented to Paiva's representation of Alamo in this action.

In support of the motion, Rodriguez submitted a declaration. He stated that he was in the business of providing trucking and administrative services and owned specific trade equipment pertaining to the recycling industry. About May 2006, Michael Mendonca (Mendonca) sought to operate a recycling business and formed Alamo for that purpose. Rodriguez provided trucking and administrative services for Alamo and allowed Alamo to utilize certain trade equipment owned by Rodriguez on an "at will" basis in exchange for a percentage of Alamo's profits. The Law Firm provided legal advice with respect to the parties' business relationship relating to the recycling business.

Rodriguez and Mendonca discussed the need for estate planning. Mendonca introduced Rodriguez to Paiva of the Law Firm. Rodriguez hired Paiva and provided him with "detailed information concerning [Rodriguez's] assets, including . . . various business interests, banking and investment accounts, real and personal property including where such assets are located." Paiva created a family trust for Rodriguez and his wife,

which was executed on July 24, 2006. Later that year, Rodriguez hired Paiva to collect on a defaulted note against the purchaser of real property owned by Rodriguez.

Paiva submitted a declaration in support of Alamo's opposition to the motion. Paiva denied that the Law Firm was ever hired by Rodriguez to collect on a defaulted note; however, he acknowledged that the Law Firm had drafted a family trust and last will and testament for Rodriguez and his wife.

After considering the evidence and arguments, the trial court granted the motion to disqualify, stating that Paiva and the Law Firm "are disqualified from representing any party in the . . . action and are ordered not to disclose any confidential information gained by virtue of their representation of [Defendants] to [Alamo and Mendonca] or any representative thereof."

II. DISCUSSION

A. Standard of Review

"A motion to disqualify counsel brings the client's right to the attorney of his or her choice into conflict with the need to maintain ethical standards of professional responsibility. [Citations.] The paramount concern is the preservation of public trust in the scrupulous administration of justice and the integrity of the bar. [Citations.]" [Citation.]

"Where an attorney successively represents clients with adverse interests, and where the subjects of the two representations are substantially related, . . . the attorney [must] be disqualified from the second representation. [Citation.]" [Citation.] "[T]he

substantial relationship test is “intended to protect the confidences of former clients when an attorney has been in a position to learn them.” [Citation.]

“The ‘court should “focus on the similarities between the two factual situations, the legal questions posed, and the nature and extent of the attorney’s involvement with the cases.” [Citation.] It should consider “. . . the attorney’s possible exposure to formulation of policy or strategy.” [Citation.] [Citation.] Where there is a substantial relationship, it is presumed the attorney had access to confidential information. [Citation.] ‘Generally, a trial court’s decision on a disqualification motion is reviewed for abuse of discretion.’ [Citations.]” (*Knight v. Ferguson* (2007) 149 Cal.App.4th 1207, 1212-1213 (*Knight*).)

B. Analysis

Alamo challenges the trial court’s order granting Defendants’ motion to disqualify, contending: (1) there was no conflict of interest; (2) its past representation of Rodriguez is over; (3) there is no substantial relationship between Defendants and the Law Firm or Paiva; (4) the integrity of the judicial process will not be injured, nor will Defendants be unfairly disadvantaged; and (5) even if a substantial relationship existed, Alamo already knew Defendants’ confidential information, because Mendonca had known Rodriguez for over five years and had acted as his real estate agent.

An attorney is required to avoid conflicts of interest in which duties owed to different clients are in opposition. (*Flatt v. Superior Court* (1994) 9 Cal.4th 275, 282 & fn. 2, (*Flatt*); Rules Prof. Conduct, rule 3-310(C).) A conflict of interest may arise when an attorney simultaneously or successively represents clients with adverse interests.

(*Flatt, supra*, at pp. 283-284.) These situations implicate distinct ethical concerns and public policies. (*Ibid.*)

Assuming that Paiva and the Law Firm are not currently retained by Rodriguez to collect on a defaulted note, the undisputed facts establish that Paiva and the Law Firm did create a family trust for Rodriguez and his wife. When an attorney successively represents adversaries, “the chief fiduciary value jeopardized is that of client *confidentiality*,” not loyalty. (*Flatt, supra*, 9 Cal.4th at p. 283.) The former client’s expectation of confidentiality must be preserved to ensure ““the right of every person to freely and fully confer and confide in one having knowledge of the law, and skilled in its practice, in order that the former may have adequate advice and a proper defense.” [Citation.]” (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1146 (*Speedee Oil*), quoting *Mitchell v. Superior Court* (1984) 37 Cal.3d 591, 599.) The attorney must maintain those confidences inviolate and preserve them at every peril. (Bus. & Prof. Code, § 6068, subd. (e).) By virtue of this duty, an attorney in actual possession of material confidential information from a former client may not represent an adverse party absent the former client’s consent. (*H.F. Ahmanson & Co. v. Salomon Brothers, Inc.* (1991) 229 Cal.App.3d 1445, 1452; Rules Prof. Conduct, rule 3-310(E).)

In successive representation cases, if a “substantial relationship between the subjects of the prior and the current representations can be demonstrated, access to confidential information by the attorney in the course of the first representation (relevant, by definition, to the second representation) is *presumed* and disqualification of the

attorney's representation of the second client is mandatory" (*Flatt, supra*, 9 Cal.4th at p. 283; see also *Rosenfeld Construction Co. v. Superior Court* (1991) 235 Cal.App.3d 566, 575, [""If a substantial relationship is established, the discussion should ordinarily end. The rights and interests of the former client will prevail. Conflict would be presumed; disqualification will be ordered.""].) In the private arena, disqualification extends from the affected attorney to his or her firm. (*SpeeDee Oil, supra*, 20 Cal.4th at p. 1146.) When a client has disclosed confidences to an attorney who later becomes the client's litigation opponent, "[n]o amount of assurances or screening procedures, no 'cone of silence,' could ever convince the opposing party that the confidences would not be used to its disadvantage." (*Cho v. Superior Court* (1995) 39 Cal.App.4th 113, 125.) "No one could have confidence in the integrity of a legal process in which this is permitted to occur without the parties' consent." (*Ibid.*)

Applying the above to the facts of this case, we note that an attorney-client relationship existed between Rodriguez, on the one hand, and Paiva and the Law Firm, on the other. Paiva and the Law Firm's creation of Rodriguez's family trust required Rodriguez to disclose confidences, specifically financial confidences.² Now Paiva and the Law Firm represent Alamo and have filed a lawsuit against Defendants based on Alamo's claim that Defendants misappropriated money and wrongfully took three Caterpillar forklifts. We reject Alamo's claim that Paiva and the Law Firm did not obtain

² Although Mendonca had known Rodriguez for five years and acted as his real estate agent, the financial information provided for the purchase of real property is not nearly as extensive as that provided in the creation of a family trust.

relevant confidential information. The financial information obtained from Rodriguez for the purpose of creating a trust is relevant in collecting any judgment that Alamo obtains against Defendants. To allow Paiva and the Law Firm to continue to represent Alamo would unfairly disadvantage Defendants. “A lawyer has a duty not to “do anything which will injuriously affect his former client.” [Citation.]” (*Knight, supra*, 149 Cal.App.4th at p. 1215-1216.)

While we recognize Alamo’s interest in maintaining its current counsel, such interest “must yield to ethical considerations that affect the fundamental principles of our judicial process. [Citations.]” (*Speedee Oil, supra*, 20 Cal.4th at p. 1145.)

III. DISPOSITION

The order is affirmed. Costs are awarded to Defendants on appeal.

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HOLLENHORST

Acting P. J.

We concur:

RICHLI

J.

GAUT

J.